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12 T. CHRISTY ENTERPRISES, INC.  
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11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION  
14

15 WILSON & COUSINS DIVISION OF  
16 PALAMAR INDUSTRIES, INC., a California  
17 corporation,

17 Plaintiff,

18 v.

19 T. CHRISTY ENTERPRISES, INC.,

20 Defendant.  
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) Civil Action No. C 3:08-0098 PJH  
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)

) **DEFENDANT T. CHRISTY**  
) **ENTERPRISES, INC.'S ANSWER**  
) **TO COMPLAINT**  
)  
)  
)

) **DEMAND FOR JURY TRIAL**  
)  
)

1 Defendant T. Christy Enterprises, Inc. ("T. Christy" or "Defendant") hereby  
2 makes the following response to the Complaint of Plaintiff Wilson & Cousins Division of  
3 Palamar Industries, Inc. ("Wilson & Cousins" or "Plaintiff") in the above-captioned action.

4 **THE PARTIES**

5 1. T. Christy lacks sufficient information to admit or deny the allegations of Paragraph  
6 1 of the Complaint and, on that basis, denies them.

7 2. T. Christy admits the allegations of Paragraph 2 of the Complaint.

8 **JURISDICTION AND VENUE**

9 3. T. Christy admits the allegations of Paragraph 3 of the Complaint.

10 4. T. Christy admits the allegations of Paragraph 4 of the Complaint.

11 5. T. Christy admits that this Court has jurisdiction over T. Christy, and that venue is  
12 proper in this Court. T. Christy denies the remaining allegations of Paragraph 5 of the  
13 Complaint.

14 6. T. Christy believes no response to the allegations of Paragraph 6 of the Complaint is  
15 required or appropriate. Local Rule 3-2(c) states that intellectual property cases will be  
16 assigned on a district-wide basis and exempts intellectual property cases from the requirement  
17 that cases be assigned to the Division in which the action arose. Therefore, Plaintiff's  
18 allegations regarding intradistrict assignment do not appear to be relevant to this case.

19 **FACTUAL BACKGROUND**

20 7. T. Christy lacks sufficient information to admit or deny the allegations of Paragraph  
21 7 of the Complaint and, on that basis, denies them.

22 8. T. Christy lacks sufficient information to admit or deny the allegations of Paragraph  
23 8 of the Complaint and, on that basis, denies them.

24 9. T. Christy lacks sufficient information to admit or deny the allegations of Paragraph  
25 9 of the Complaint and, on that basis, denies them.

26 10. T. Christy lacks sufficient information to admit or deny the allegations of Paragraph  
27 10 of the Complaint and, on that basis, denies them.

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1 11. T. Christy lacks sufficient information to admit or deny the allegations of Paragraph  
2 11 of the Complaint and, on that basis, denies them.

3 12. T. Christy lacks sufficient information to admit or deny the allegations of Paragraph  
4 12 of the Complaint and, on that basis, denies them.

5 13. T. Christy lacks sufficient information to admit or deny the allegations of Paragraph  
6 13 of the Complaint and, on that basis, denies them.

7 14. T. Christy lacks sufficient information to admit or deny the allegations of Paragraph  
8 14 of the Complaint and, on that basis, denies them.

9 15. T. Christy lacks sufficient information to admit or deny the allegations of Paragraph  
10 15 of the Complaint and, on that basis, denies them.

11 16. T. Christy admits that Underwriters' Laboratories ("UL") is a U.S. organization  
12 based in Northbrook, Illinois that tests products and components, and that permits products to  
13 carry a UL certification mark under terms and conditions specified by UL. T. Christy admits  
14 that Underwriters' Laboratories of Canada provides similar services in Canada. T. Christy  
15 lacks sufficient information to admit or deny the remaining allegations of Paragraph 16 of the  
16 Complaint and, on that basis, denies them.

17 17. T. Christy admits that UL product certifications are sometimes required for fire  
18 protection equipment in contract specifications, for safety reasons, and for insurance  
19 requirements; and that architects, engineers, contractors and builders sometimes specify UL  
20 Listed equipment or UL Recognized materials. T. Christy also admits that Plaintiff has  
21 accurately quoted UL literature at lines 15-22 of Paragraph 17. T. Christy denies the  
22 remaining allegations of Paragraph 17 of the Complaint.

23 18. T. Christy lacks sufficient information to admit or deny the allegations of Paragraph  
24 18 of the Complaint and, on that basis, denies them.

25 19. T. Christy lacks sufficient information to admit or deny the allegations of Paragraph  
26 19 of the Complaint and, on that basis, denies them.

27 20. T. Christy admits that a check valve is a valve that normally allows fluid to flow  
28 through it in only one direction. T. Christy also admits that check valves are two-port valves,

1 meaning they have two openings in the body, one for fluid to enter and the other for fluid to  
2 leave. T. Christy lacks sufficient information to admit or deny the remaining allegations of  
3 Paragraph 20 of the Complaint and, on that basis, denies them.

4 21. T. Christy lacks sufficient information to admit or deny the allegations of Paragraph  
5 21 of the Complaint and, on that basis, denies them.

6 22. T. Christy lacks sufficient information to admit or deny the allegations of Paragraph  
7 22 of the Complaint and, on that basis, denies them.

8 23. T. Christy denies the allegations of Paragraph 23 of the Complaint.

9 24. T. Christy admits that the recited elements appear in the photocopy of the product  
10 sample included by Plaintiff as Exhibit 6. T. Christy lacks sufficient information to admit or  
11 deny the allegations of Paragraph 24 of the Complaint and, on that basis, denies them.

12 25. T. Christy denies the allegations of Paragraph 25 of the Complaint.

13 26. T. Christy admits that Paragraph 26 of the Complaint accurately quotes from Exhibit  
14 7, which appears to be a past version of the webpage [www.tchristy.com/About.asp](http://www.tchristy.com/About.asp). Much of  
15 the quoted language no longer appears on the current version of that webpage.

16 27. T. Christy denies the allegations of Paragraph 27 of the Complaint.

17 28. T. Christy admits that Exhibit 9 is a copy of a former version of its product catalog.  
18 T. Christy denies the remaining allegations of Paragraph 28 of the Complaint.

19 29. T. Christy denies the allegations of Paragraph 29 of the Complaint.

20 30. In response to Paragraph 30 of the Complaint, T. Christy responds as follows:  
21 T. Christy has stipulated to a temporary injunction, enjoining T. Christy from depicting  
22 Plaintiff's products on its web site catalogs, and from selling or distributing check valves or  
23 hose nozzles that feature (a) any UL or ULC control number assigned to Plaintiff,  
24 (b) Plaintiff's alleged helmet trademark, (c) the model numbers 1E144T, 1E144G, and HNL-  
25 206T, or (d) Plaintiff's alleged trade dress. T. Christy claims no right to use any UL or ULC  
26 control number assigned to Plaintiff by UL or ULC, or any mark in which Plaintiff  
27 establishes trademark rights. T. Christy denies the remaining allegations of Paragraph 30 of

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1 the Complaint, including any allegation that further injunctive relief is necessary or  
2 appropriate.

3 **COUNT I**

4 31. T. Christy incorporates by reference its responses to Paragraphs 1-30 of the  
5 Complaint.

6 32. T. Christy denies the allegations of Paragraph 32 of the Complaint.

7 33. T. Christy denies the allegations of Paragraph 33 of the Complaint.

8 34. T. Christy denies the allegations of Paragraph 34 of the Complaint.

9 35. T. Christy denies the allegations of Paragraph 35 of the Complaint.

10 **COUNT II**

11 36. T. Christy incorporates by reference its responses to Paragraphs 1-35 of the  
12 Complaint.

13 37. T. Christy denies the allegations of Paragraph 37 of the Complaint.

14 38. T. Christy denies the allegations of Paragraph 38 of the Complaint.

15 39. T. Christy denies the allegations of Paragraph 39 of the Complaint.

16 40. T. Christy denies the allegations of Paragraph 40 of the Complaint.

17 **COUNT III**

18 41. T. Christy incorporates by reference its responses to Paragraphs 1-40 of the  
19 Complaint.

20 42. T. Christy denies the allegations of Paragraph 42 of the Complaint.

21 43. T. Christy denies the allegations of Paragraph 43 of the Complaint.

22 44. T. Christy denies the allegations of Paragraph 44 of the Complaint.

23 45. T. Christy denies the allegations of Paragraph 45 of the Complaint.

24 **COUNT IV**

25 46. T. Christy incorporates by reference its responses to Paragraphs 1-45 of the  
26 Complaint.

27 47. T. Christy denies the allegations of Paragraph 47 of the Complaint.

28 48. T. Christy denies the allegations of Paragraph 48 of the Complaint.

1 49. T. Christy denies the allegations of Paragraph 49 of the Complaint.

2 50. T. Christy denies the allegations of Paragraph 50 of the Complaint.

3 51. T. Christy denies the allegations of Paragraph 51 of the Complaint.

4 **COUNT V**

5 52. T. Christy incorporates by reference its responses to Paragraphs 1-51 of the  
6 Complaint.

7 53. T. Christy denies the allegations of Paragraph 53 of the Complaint.

8 54. T. Christy denies the allegations of Paragraph 54 of the Complaint.

9 55. T. Christy denies the allegations of Paragraph 55 of the Complaint.

10 56. T. Christy denies the allegations of Paragraph 56 of the Complaint.

11 57. T. Christy denies the allegations of Paragraph 57 of the Complaint.

12 **COUNT V**

13 58. T. Christy incorporates by reference its responses to Paragraphs 1-57 of the  
14 Complaint.

15 59. T. Christy denies the allegations of Paragraph 59 of the Complaint.

16 60. T. Christy denies the allegations of Paragraph 60 of the Complaint.

17 61. T. Christy denies the allegations of Paragraph 61 of the Complaint.

18 62. T. Christy denies the allegations of Paragraph 62 of the Complaint.

19 63. T. Christy denies the allegations of Paragraph 63 of the Complaint.

20 **AFFIRMATIVE DEFENSES**

21 T. Christy asserts the following affirmative defenses to the counts set forth in  
22 Plaintiff's Complaint. T. Christy's decision to plead these allegations as affirmative defenses  
23 is not an admission that T. Christy bears the burden of proof on any of these issues. To the  
24 contrary, T. Christy believes that Plaintiff bears the burden of proof on many of these issues.

25 1. The elements described in Paragraph 25 of the Complaint, alone or in combination,  
26 are not inherently distinctive and have not acquired secondary meaning. Accordingly,  
27 Plaintiff has no trade dress rights or other rights in these elements.

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1       2. The elements described in Paragraph 25 of the Complaint, individually and in  
2 combination, are functional. Accordingly, Plaintiff has no trade dress rights or other rights in  
3 these elements.

4       3. The “Helmet Mark” shown in Exhibit 2 to the Complaint is not inherently distinctive  
5 and has not acquired secondary meaning in the United States. Accordingly, Plaintiff has no  
6 trademark rights or other rights in the Helmet Mark in the United States.

7       4. The use of a mark depicting a fireman’s helmet on fire safety equipment is  
8 functional and otherwise unprotectable under the trademark and unfair competition laws.  
9 Accordingly, Plaintiff has no trademark rights or other rights in the Helmet Mark in the  
10 United States.

11       5. The part numbers referenced in the Complaint are not inherently distinctive and have  
12 not acquired secondary meaning. Accordingly, Plaintiff has no trademark rights or other  
13 rights in the part numbers referenced in the Complaint.

14       6. The control numbers “27gh,” “UL 27gh,” and “ULC 27gh” are not inherently  
15 distinctive and have not acquired secondary meaning.” Accordingly, Plaintiff has no  
16 trademark rights or other rights in these control numbers.

17       7. Plaintiff is not the owner of the “UL” or “ULC” certification marks, or the control  
18 numbers “27gh,” “UL 27gh,” or “ULC 27gh.” Accordingly, Plaintiff lacks standing to  
19 complain of the alleged unauthorized use of these certification marks and control numbers.

20       8. The depiction of a trademark in a manner that cannot or will not be discerned by an  
21 ordinary consumer is not likely to cause confusion and is not a violation of the trademark  
22 rights or any other rights of the Plaintiff.

23       9. T. Christy alleges on information and belief that its manufacturer was expressly or  
24 impliedly licensed or otherwise authorized by Plaintiff to sell the products at issue to the  
25 public, including to T. Christy; that the products are therefore licensed products; and that T.  
26 Christy therefore cannot be liable under any legal theory for reselling them.

27       10. T. Christy was a mere innocent distributor of the products at issue in this case.  
28 Accordingly, Plaintiff should not be permitted to recover damages, profits, or attorneys’ fees,

1 and the scope of any injunctive relief should reflect T. Christy's status as an innocent  
2 distributor.

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4 Respectfully submitted,

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6 KNOBBE, MARTENS, OLSON & BEAR, LLP  
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8 Dated: January 28, 2008

By: s/ Paul A. Stewart

9 John B. Sganga  
10 Paul A. Stewart  
11 Attorneys for Defendant,  
12 T. CHRISTY ENTERPRISES, INC

13 **JURY TRIAL DEMANDED**  
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15 T. Christy hereby demands a trial by jury as to all issues triable by jury in this action.  
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18 KNOBBE, MARTENS, OLSON & BEAR, LLP  
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21 Dated: January 28, 2008

By: s/ Paul A. Stewart

22 John B. Sganga  
23 Paul A. Stewart  
24 Attorneys for Defendant,  
25 T. CHRISTY ENTERPRISES, INC  
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27  
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**CERTIFICATE OF SERVICE**

I hereby certify that on January 28, 2008, I caused the foregoing document titled:  
**DEFENDANT T. CHRISTY ENTERPRISES, INC.'S ANSWER TO COMPLAINT** to  
be electronically filed with the Clerk of the Court using the CM/ECF system which will send  
electronic notification of such filing to the following person(s):

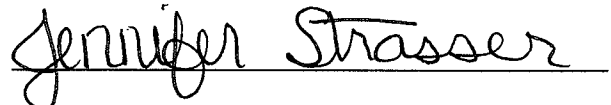
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**Eric W. Buetzow**  
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I certify and declare under penalty of perjury under the laws of the State of California  
that I am employed in the office of a member of the bar of this Court at whose direction the  
service was made, and that the forgoing is true and correct.

Executed on January 28, 2008 at Irvine, California.

  
Jennifer A. Strasser

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